**A** **BILL**

TO AMEND SECTION 56-5-2953, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE VIDEO RECORDING OF THE INCIDENT SITE AND THE BREATH TEST SITE OF A PERSON CHARGED WITH OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE, CHARGED WITH AN UNLAWFUL ALCOHOL CONCENTRATION, OR CHARGED WITH FELONY DRIVING UNDER THE INFLUENCE, SO AS TO REVISE THE CIRCUMSTANCES UPON WHICH A VIDEO RECORDING OF THESE PROCEEDINGS IS REQUIRED TO BE MADE, THE PROCEDURES THAT MUST BE FOLLOWED WHEN A VIDEO RECORDING IS MADE, AND THE CIRCUMSTANCES THAT EXEMPT AN OFFICER FROM MAKING A VIDEO RECORDING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56‑5‑2953 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“Section 56‑5‑2953. (A) ~~A person who violates~~ When a law enforcement officer is investigating a person suspected of violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 ~~must have his~~ that officer or another officer participating in the investigation or arrest should make a reasonable attempt to video record the person’s conduct at the incident site and the breath test site ~~video recorded~~.

(1)(a) The video recording at the incident site ~~must:~~

~~( i)~~ ~~not begin~~ should begin no later than the activation of the officer’s blue lights~~;~~

~~(ii)~~ ~~include any field sobriety tests administered; and~~

~~(iii)~~ ~~include the arrest of a person for a violation of Section 56‑5‑2930 or Section 56‑5‑2933, or a probable cause determination in that the person violated Section 56‑5‑2945, and show the person being advised of his Miranda rights~~.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) The video recording at the breath test site ~~must~~ should:

(a) include the entire breath test procedure~~, the person being informed that he is being video recorded, and that he has the right to refuse the test~~;

~~(b)~~ ~~include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test;~~ and

~~(c)~~(b) ~~also~~ include the person’s conduct during the required twenty‑minute ~~pre‑test~~ pretest waiting period, unless the person indicates that he is refusing the test or the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.

(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. ~~Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens’ arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer’s failure to produce the video recording.~~

If an investigating officer is unable to produce a videotape or is only able to produce a partial videotape after making reasonable attempts to do so, the officer shall submit a sworn affidavit stating that the video or partial video was not produced based on one or more of the following reasons:

(1) the video recording equipment at the incident site or breath test site was in an inoperable condition;

(2) there were mechanical failures in video equipment, audio equipment, or both, at the incident site or breath test site;

(3) there were environmental factors which adversely impacted the ability to produce the video which may include, but are not limited to, excess sunlight, darkness, sound, or electrical interference, and weather;

(4) the person needed emergency medical treatment;

(5) the person’s own actions or conduct prevented the production of the video;

(6) the person was taken for a blood sample, urine sample, or both pursuant to Section 56‑5‑2950;

(7) there were exigent circumstances and describing those circumstances;

(8) there were circumstances including, but not limited to, road blocks, collision investigations, or citizens’ arrests, where an arrest has been made and the video recording equipment was not activated by blue lights;

(9) there was no vehicle at the incident site equipped with video recording equipment; or

(10) any other lawful and valid reason for the failure to produce the video based on the totality of the circumstances.

(C) A video recording must not be disposed of in any manner except for its transfer to a master recording for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary video recording equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of video recording equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used primarily for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used primarily for traffic enforcement to ensure proper maintenance of video recording equipment.

(E) Beginning one month from the effective date of this section, all of the funds received in accordance with Section 14‑1‑208(C)(9) must be expended by SLED to equip all breath test sites with video recording devices and supplies. Once all breath test sites have been equipped fully with video recording devices and supplies, eighty‑seven and one‑half percent of the funds received in accordance with Section 14‑1‑208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply video recording equipment for vehicles used for traffic enforcement. The remaining twelve and one‑half percent of the funds received in accordance with Section 14‑1‑208(C)(9) must be expended by SLED to purchase, maintain, and supply video recording equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14‑1‑208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of video recording equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department’s and SLED’s annual appropriation request to the General Assembly.

(F) The Department of Public Safety and SLED must promulgate regulations necessary to implement the provisions of this section.

(G) The provisions contained in ~~Section 56‑5‑2953~~ subsections (A), (B), and (C) take effect for each law enforcement vehicle used primarily for traffic enforcement once the law enforcement vehicle is equipped with a video recording device. The provisions contained in ~~Section 56‑5‑2953~~ subsections (A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a video recording device.

(H) Nothing in this section shall be construed to require dismissal of a charge for an alleged violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. If the trial court makes a specific finding on the record, based upon the totality of the circumstances, that the arresting officer’s failure to comply with this section was both wilful and malicious, the court may prohibit the prosecutor from introducing evidence related to such charges or may enter such other relief as it deems just under the circumstances. To the extent any provision of law is inconsistent with the provisions of this subsection, the provisions of this subsection shall govern.

(I) This section shall not apply to cameras worn by any investigating officer or any cameras not under control of the investigating officers.

(J) This section shall not apply to drug recognition expert examinations.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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